

Traditional knowledge in Russian legislation (lawyers opinions)

Traditional knowledge on the whole and also traditional knowledge connected with genetic resources, are not determined in legislation of the Russian Federation. Therefore, the both are deprived of legal safeguard, according to the Russian Federation law “On copyright and allied rights” and “Patent law of the Russian Federation” dated September 23, 1992 N 3517-I.

In legal institutions of the Russian Federation, in connection with rendering the legal safeguard to an entity of intellectual property, there is no a unified approach regarding a beneficiary, i.e. a person or a group of persons who have the right to gain from transfer of intellectual property.

In the copyright, the author (creator, originator) – a person having creatively endowing a work is the beneficiary, and also legal successors, in particular, the author's heirs are.

The allied rights institution considers an initiator, organizer – a person contributing to distribution of the works as the beneficiary.

In the patent right institutions of so called industrial property, there is also no unity in determining the beneficiary. By the patent law, the exclusive right belongs to a patent owner (Article 10 of the Russian Federation Patent Law dated September 23, 1992 N 3517-I), acted as by the author of invention, utility model, industrial model (natural person, by creative labor of whom it is built up), his employer (if the entity was produced by the author in connection with execution of official duties) or legal successors.

A single attribute, uniting all above noted persons both in the copyright and patent right, is contribution to or creation of the copyrightable matter. Thus, as the beneficiary, a person or his legal successor could be considered contributing to creation of, entering expenses in the copyrightable matter.

In the copyright and the patent right, after the author's death in case of heirs' absence regarding works of the copyright or entities of the patent right, according to the Russian civil legislation, all rights are transferred to the state, which can pass the property right control to its authorized body.

The stated above says on existing difficulties in determining the copyright and the beneficiary, which are not possible to detect regarding traditional knowledge bearers and entities of traditional knowledge themselves, basing on provisions of the current Russian legislation.

Specialist in the field of the copyright and the patent right, doctor of law V. Buzov believes so.

Specialist in the field of the constitution right, doctor of law V. Kryazhkov believes that protection of traditional knowledge and corresponding rights of its bearers (keepers) – peoples, communities, separate persons – is assumed as the Russian Federation guarantees the rights of the small-numbered peoples according to the received principles and norms of international law and international agreements of the Russian Federation (Article 69 of the RF Constitution). Let us name a number of the noted rights.

Firstly, it is the right for protecting traditional way of life of the small-numbered ethnic community (item “m” part 1 Article 72 of the RF Constitution). This way of life is based on historical experience of the named communities' ancestors in the field of nature use, original social organization, distinctive culture, preservation of traditions and believes, and thus, includes as integral element the traditional knowledge, protection of which in its turn takes place in the context of protecting the small-numbered indigenous peoples' way of life.

Secondly, it is the right of the small-numbered peoples, their associations and persons relying to these peoples, for traditional economic activity, traditional occupancies and their training, for following the traditions (Article 8, 10 of the Federal Law “On guarantees of the rights of the Russian Federation small-numbered indigenous peoples”).

Thirdly, it is the right to apply traditions under execution of traditional nature use (Article 1,2 of Federal Law “On territories of traditional nature use of small-numbered indigenous peoples of the North, Siberia and the Far East of the Russian Federation”), which means the

possibility to be guided by rules accumulating traditional knowledge of indigenous peoples on habitat.

Answering the question “Is the legal protection of traditional knowledge, rights and interests of their owners possible?”, - V. Kryazhkov writes: ”It is not excluded on the basis of freedom of agreement, concluded in order of Article 421 of the RF Civil Code between concrete entities, when, for example, one side – an indigenous community – recognizes admissible the use of knowledge accumulated by an ethnic community on herbs' curing properties for making an appropriate remedy, and another one – a producer, using this knowledge, - is obliged to note its source and pay the community a certain compensation.

To protect traditional knowledge in known limits, provisions of the RF Civil Code (part four) on the rights for results of intellectual activity and means of individualization can be used, for example, those which rely to the rights for manufacturing secret, trade mark, name of the product origin place. But from the named positions, protection of traditional knowledge is still problematic, as by the Civil Code, the copyright does not cover the works of popular art (folklore), having no concrete authors (Article 1259)¹.

If traditional knowledge is considered as a sort of information, owners of which are communities, other indigenous associations, citizens (elders, experts authorized by an ethnic group), then certain possibilities on protecting this knowledge is given by the Federal Law dated June 27, 2006 “On information, information technologies and protection of information”. In particular, according to it, an information owner, unless otherwise provided by the federal laws, has the right to: permit or limit information access, determine the order and terms of such access; use information, including its distribution in his discretion; pass information to other persons by an agreement or other basis set by the law; defend his rights by means set by law in case of illegal information obtaining or its illegal use by other persons; act in other way with information or permit such actions (part 3, Article 6). Distribution of information should be accompanied by message on its owner in the form and volume enough for its identification (part 2, Article 10). Agreement of the sides can set up requirements to register information (part 1, Article 6).

V. A. Kryazhkov, doctor of law, professor,
advisor of the RF Constitution Court (Moscow),
“Rossiyskiy Yuridicheskiy Zhurnal”, N 3, 2008.

ⁱ It should be noted that by its characteristics, traditional knowledge is close to folklore, as it as the folklore is a form of traditional culture expression – intellectual creative potential of people accumulated during centuries and having no concrete authors. It is no mere chance that protection of this knowledge in some countries is executed as protection of folklore (I.I. Sokolov, V.V. Stepanov. Legal aspects of peoples medicine protection. *Соколов И.И., Степанов В.В. Правовые аспекты охраны народной медицины // <http://www.russianlaw.net/law/doc/a130-2.htm>*)